

**Small Claims
Final Determination
Findings and Conclusions**

Petition: 45-001-13-1-5-00281-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-32-231-005.000-001
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated his appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination for 2013 on December 9, 2015. On January 26, 2016, Petitioner filed the Form 131 with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on July 10, 2017. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 4629 Arthur Street in Gary.
6. For 2013, the property was assessed at \$5,400.
7. Petitioner requested an assessed value of \$2,300.

Record

8. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Respondent Exhibit 1:	Property record card for the subject property,
Respondent Exhibit 2:	GIS map,
Respondent Exhibit 3:	List of comparable sales,
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

- 9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
- 10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
- 11. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
- 12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value did not increase from 2012 to 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
 - a. Petitioner contends the township assessor has used the assessment process to artificially increase total assessed values for the City of Gary to offset a reduction in property taxes afforded to U.S. Steel. The result being that U.S. Steel's taxes have decreased while taxes for other taxpayers in the area have increased, in some cases significantly. Such increases have made certain properties throughout the area unmarketable. *Nowacki testimony.*
 - b. Petitioner contends that there is no construction in the area, and the neighborhood is filled with vacant and abandoned buildings. They are a liability to other taxpayers. Respondent reduced the assessment from \$5,400 to \$3,500 in 2016, which proves that values are declining. *Nowacki testimony.*
 - c. Petitioner contends that the only markets for these properties are treasurer's sales or commissioners' sales where properties routinely sell for only a few hundred dollars. *Nowacki testimony.*
15. Respondent's case:
 - a. Respondent contends there is no factual basis to support Petitioner's claims of diminished values due to the presence of U.S. Steel. *Metz testimony.*
 - b. Respondent submitted evidence of purportedly comparable sales used to establish the assessed value of the subject property. According to Mr. Metz, the purportedly comparable sales show that the assessment is consistent with the market and no change should be made. *Metz testimony; Resp't Ex. 3.*
 - c. Respondent acknowledges the 2016 assessment was reduced, but it is not presently at issue. *Metz testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-

- use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).
- c. Petitioner contends the property should be assessed at \$2,300. Petitioner presented no substantial evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 198).
- d. Petitioner failed to make a prima facie case for changing the assessment. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

17. Petitioner failed to establish a prima facie case that the 2013 assessed value is incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should not be changed

ISSUED: October 4, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.